



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE

FISCAL REVIEW COMMITTEE

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MEMORANDUM

TO: Members of the Fiscal Review Committee

FROM: Kathryn Chastain, ^{KL} Local Government Analyst

DATE: September 9, 2008

SUBJECT: Uncollected Criminal Case Assessments

Summary

As part of our research on incarceration costs and fine revenue pursuant to Senate Joint Resolution 1165, we conducted a survey of court clerks in Tennessee. We requested information on uncollected criminal case assessments in 2003 and 2007, including fines, fees, litigation taxes, and court costs. The survey was sent to all court clerks who process criminal cases, and included ninety-eight Circuit, Criminal, and General Sessions clerks. As of September 9, 2008, forty-seven clerks had responded. Of those, fifteen were able to provide quantifiable data, twenty sent partial data, and twelve responded but were unable to supply the requested data. Fifty-one clerks had not responded.

In the fifteen counties that provided quantifiable data, the percentage of collected criminal case assessments decreased from an average of 62 percent in 2003 to 47

percent in 2007. Extrapolating these numbers statewide^a, in 2003 assessments exceeded collections by \$301,329,155. In 2007 assessments exceeded collections by \$383,571,741. Counties vary widely in their success in collecting assessments, and there are no statistically significant patterns due to the variety of reasons assessments remain uncollected. Nevertheless, the relatively high collection rates of some counties (Putnam, Sullivan, Blount, Franklin, Warren) suggest that a concerted statewide effort to collect these assessments would result in substantial additional revenue for the state and local governments.

Methodology

Most clerks indicated they do not track data on assessed fines, fees, litigation taxes, and court costs. To estimate this number, clerks were asked to provide the number of cases adjudicated and the dollar amount of assessments collected. They were then asked to divide cases into the four categories of traffic offenses, DUI offenses, other misdemeanors, and felonies and to provide the average assessment for those categories. To reach an estimate on the amount of assessed fines, fees, litigation taxes, and court costs, the number of offenses in each category was multiplied by the average assessment for that category. The numbers for each category were totaled and then subtracted from the total dollar amount collected to reach an estimate of how much remained uncollected.

Clerks responded that they were unable to differentiate uncollected amounts among the above categories. This limitation is significant because it is reasonable to assume that collection rates vary according to category of offense. For instance, collection rates for a traffic or DUI offense in which payment of the assessment is required for reinstatement of a driver's license can reasonably be assumed to be higher than for a felony for which the defendant is incarcerated.

Limitations and lack of uniformity in record-keeping (e.g., variance in software programs, lack of automated systems) made data collection practically impossible for many clerks. It also made reliable data interpretation difficult and the information we collected is limited. All data collected are estimates. These data are only snapshots of 2003 and 2007 and do not include information from other years, though large amounts presumably remain uncollected in those years.

Findings

Almost all responding clerks expressed an interest in collecting uncollected assessments, but emphasized they could not do so with current employee levels. Court clerks gave many reasons why assessments are not collected, including:

^a The weighted average was developed by extrapolating data provided by the fifteen counties listed in the table below. The population of these fifteen counties is 44 percent of the 2000 U.S. Census statewide population of 5,689,283. Thus the numbers listed in the table below as "Survey Totals" represent 44 percent of the "State Totals" column.

- the defendant is indigent;
- there is no effective penalty for failure to pay;
- clerks do not have enforcement capability;
- the defendant is incarcerated;
- the defendant cannot be located;
- there is a lack of coordination between judges, clerks, and probation officers;
- case assessments are waived by the judge;
- payment plans delay payment in full;
- clerks are not allowed to collect assessments after ten years.

Some practices in specific counties may be useful for other counties. For example, Davidson County reports that it partners with the Department of Safety in all cases in which a driver's license is suspended. Case assessments must be paid before a driver's license can be reinstated. Franklin County uses a private collection agency for criminal cases heard in General Sessions court. Madison County's General Sessions court has a full-time employee dedicated to collecting assessments.

Putnam County's collections have increased. Estimated assessments for 2007 were \$4,504,955 while received assessments were \$5,030,376, indicating \$525,421 more was collected in 2007 than was assessed due to collections from assessments in prior years. According to the court clerk, assessments have increased in large part because the Putnam County General Sessions judges hold a pay docket once a month. If defendants cannot pay their assessments on time or according to the payment plan that was agreed upon, they appear before the judge to explain why the payment has not or cannot be made. At the discretion of the judge, payments are reset or the defendant is incarcerated. If defendants do not appear on the pay docket, they are cited for "failure to appear" and are incarcerated.

Court clerks gave specific suggestions for improving collection, including hiring additional staff, giving clerks more authority to collect uncollected assessments, the ability to incarcerate defendants for failure to pay (this would require a statutory amendment and would be subject to constitutional limitation), more assistance from judges, requiring assessments to be paid as a condition of probation, recruiting probation officers to assist in collection, and garnishment of wages and tax refunds.

Recommendations

Based on the data collected, 70 percent seems to be an achievable collection rate, compared with the actual extrapolated collection rate of 47 percent. A 70 percent collection rate would have resulted in \$279,982,309 collected statewide in 2007. The actual collection was \$84,789,350, so a 70 percent collection rate would have resulted in an additional \$195,192,959 collected statewide in 2007. Based on an estimated breakdown of fees provided by Putnam County, 20 percent of those dollars would go to the state, 33 percent to the counties, and 47 percent to various departments, agencies, and designated funds. State revenue would have increased \$39,038,592, county

revenue \$64,413,676, and other revenue (such as to county sheriffs, the indigent defense fund, and the drug and alcohol addiction fund) \$91,740,691. By statute, payments are applied first to litigation taxes, then court costs, and finally to fines.

A 60 percent collection rate would have resulted in \$239,984,836 collected statewide in 2007. The actual collection was \$84,789,350, so a 60 percent collection rate would have resulted in an additional \$155,195,486 collected statewide in 2007. Based on the estimated breakdown of fees provided by Putnam County, state revenue would have increased \$31,039,097, county revenue \$51,214,510, and other revenue \$72,941,878.

The Fiscal Review Committee staff recommends the following ways to address the issue of uncollected criminal case assessments and partially to offset incarceration costs:

1. Establish a clear line of authority regarding collection of uncollected assessments, and require assessments to be paid in full as a condition of probation. Current law divides the responsibility for collections between court clerks and district attorneys general, but does not assign primary responsibility. Enlist the assistance of judges and probation officers.
2. Require an annual report of uncollected criminal case assessments from each county by the Administrative Office of the Courts to the Fiscal Review Committee. This report will provide public accountability, encourage an increase in collection rates, and provide guidance for legislators when deciding which types of fines or fees to increase. Providing this report may require counties who do not plan to adopt the TnCIS system to make changes in software. However, unless these changes are made data collection will continue to be haphazard and unquantifiable. As TnCIS is implemented, counties will have the ability to provide detailed reports about uncollected assessments, including listing data by types of offense.
3. Provide funding for clerks to hire an employee dedicated to collecting uncollected assessments.
4. Explore alternative methods for collecting assessments when defendants are indigent, such as community service.
5. Statutory amendment to redirect collected felony fines to the Sentencing Act Reserve Account rather than the general fund.

Estimates of 2007 Uncollected Criminal Case Assessments

County	Population (2000 Census)	Cases Adjudicated	\$ Estimated Assessments	\$ Received Assessments	\$ Uncollected Assessments	\$ Uncollected Assessments Per Capita	2007 % Collected Assessments
Shelby ^b	897,472	30,153	86,709,920	4,962,390	81,747,530	91	_____
Davidson	569,891	63,842	68,550,236	9,207,661	59,342,575	104	13
Hamilton	307,896	55,197	14,606,868	5,148,150	9,458,718	31	35
Sullivan	153,048	2,499	1,709,502	797,135	912,367	6	47
Blount	105,823	16,783	4,753,606 ^c	3,037,028	1,716,578	16	64
Anderson	71,330	10,507	6,605,313	1,083,346	5,521,967	77	16
Maury	69,498	17,008	7,725,219	2,753,434	4,971,785	72	36
Putnam	54,433	16,853	4,504,955	5,030,376	-525,421	-10	112
Hawkins	53,563	429	712,400	204,445	507,955	9	29
Gibson	48,152	4,280	904,165	509,405	394,760	8	56
Coffee	48,014	12,828	5,192,478	1,860,982	3,331,496	69	36
Dickson	43,156	542	305,826	235,958	69,868	2	77 ^d
Franklin	39,270	6,431	1,502,057	1,031,526	470,531	12	69
Warren	38,276	6,461	1,923,302	1,298,705	624,597	16	68
Moore	5,740	1,382	283,033	146,773	136,260	24	52
Survey Totals	2,505,562	245,195	175,988,880	37,307,314	168,771,566	_____	_____
Survey Averages	167,037	16,346	11,732,592	2,487,154	11,251,438	38	47 ^e
State Totals^f	5,689,283	557,261	399,974,727	84,789,350	383,571,741	_____	_____

Note: Received assessments are fluid because assessments for past years continue to be collected through late payments or payment plans.

Note: "_____" means data cannot be calculated.

^b Shelby County General Sessions was unable to respond. This data is only for Shelby County Criminal Court.

^c Because of varying fine amounts, Blount County did not include fines in all types of cases.

^d This percentage may be higher than average because Dickson County did not include fines in any cases.

^e This percentage does not include Shelby, Blount, and Dickson counties due to incomplete data provided.

^f See footnote a on page 2.

Estimates of 2003 Uncollected Criminal Case Assessments

County	Population (2000 Census)	Cases Adjudicated	\$ Estimated Assessments	\$ Received Assessments	\$ Uncollected Assessments	\$ Uncollected Assessments Per Capita	2003 % Collected Assessments
Shelby [¶]	897,472	29,783	74,279,440	4,379,000	69,900,440	78	_____
Davidson	569,891	58,375	54,232,966	7,197,868	47,035,098	83	13
Hamilton	307,896	55,168	10,919,390	4,761,550	6,157,840	20	44
Sullivan	153,048	1,874	1,080,330	1,039,480	40,850	Less than 1	96
Blount	105,823	12,689	3,206,083 ^h	2,449,598	756,485	7	76
Anderson	71,330	12,741
Maury	69,498	16,230	6,270,926	2,282,333	3,988,593	57	36
Putnam	54,433	17,637	3,447,520	4,438,418	-990,898	-18	129
Hawkins	53,563	172	199,175	120,135	79,040	1	60
Gibson	48,152	3,467	652,986	428,506	224,480	5	66
Coffee	48,014	13,267	6,362,479	1,656,281	4,706,198	98	26
Dickson	43,156	719	312,035	226,822	85,213	2	73 ⁱ
Franklin	39,270	6,404	1,295,384	1,125,985	169,399	4	87
Warren	38,276	5,869	1,295,315	1,067,683	227,632	6	82
Moore	5,740	2,066	368,574	164,116	204,458	36	45
Survey Totals	2,505,562	236,461	163,922,603	31,337,775	132,584,828	_____	_____
Survey Averages	167,037	15,764	11,708,757	2,238,413	9,470,345	27	62 ^j
State Totals^k	5,689,283	537,411	372,551,370	71,222,216	301,329,155	_____	_____

Note: Received assessments are fluid because assessments for past years continue to be collected through late payments or payment plans.

Note: "..." means data was not provided.

Note: "—" means data cannot be calculated.

[¶] Shelby County General Sessions was unable to respond. This data is only for Shelby County Criminal Court.

^h Because of varying fine amounts, Blount County did not include fines in all types of cases.

ⁱ This percentage may be higher than average because Dickson County did not include fines in any cases.

^j This percentage does not include Shelby, Blount, Anderson, and Dickson counties due to incomplete data provided.

^k See footnote a on page 2.

Where Assessments are Distributed

The assessments discussed in this memorandum are distributed in varying ways across the state. While some amounts are set in the Tennessee Code Annotated, others vary from county to county and case to case. Some costs may also be waived by the judge. In the scope of this survey, it was not possible to complete a thorough review of where assessments are distributed. The tables below are provided as an example of how fines, fees, litigation taxes, and court costs may be distributed in four categories of cases.

Putnam County: Estimated Breakdown of Assessments

	% State Allocation	% Indigent Defense	% DUI Fund	% Other State Agencies	% County Allocation	% Clerk Fees	% Sheriff, Jails, Arrests	% Other
Traffic Offenses	28	8	0	17	20	26	0	1
DUI Offenses	6	1	4	1	27	33	24	5
Other Misdemeanors	9	2	1	0	51	31	3	3
Felonies	36	1	2	0	34	23	4	1

Davidson County: Estimated Breakdown of Assessments

	% State Allocation	% Indigent Defense	% DUI Fund	% Other State Agencies	% County Allocation	% Clerk Fees	% Sheriff, Jails, Arrests	% Other
Traffic Offenses	25	8	0	0	25	27	16	0
DUI Offenses	3	1	8	0	22	8	7	50
Other Misdemeanors	7	2	0	0	46	11	4	31
Felonies ¹	0	0	0	0	2	5	91	1

Note: The percentages above may not total to 100 due to rounding.

¹ Felony fines are typically assessed to the state. In the case information provided by Davidson County no fine was assessed, which accounts for the 0 percent state allocation.

Counties Responding with Partial Data

1. Bradley
2. Clay, General Sessions
3. Cumberland
4. Fayette
5. Giles
6. Hardin
7. Humphreys
8. Knox
9. Lauderdale
10. Madison
11. Marshall
12. Monroe
13. Montgomery
14. Shelby, General Sessions
15. Sumner
16. Unicoi
17. Union
18. Washington
19. Weakley
20. Wilson

Counties Unable to Provide Data (not automated)

1. Hancock
2. Hickman
3. Trousdale

Counties Unable to Provide Data (software program does not track requested data)

1. Cheatham
2. Grundy
3. Hamblen
4. Haywood
5. McMinn
6. McNairy
7. Robertson
8. Rutherford
9. Williamson

Counties Not Responding

- | | |
|-----------------------------|------------------------------|
| 1. Bedford | 44. Sevier, Circuit |
| 2. Benton | 45. Sevier, General Sessions |
| 3. Bledsoe | 46. Smith |
| 4. Campbell | 47. Stewart |
| 5. Cannon | 48. Tipton |
| 6. Carroll | 49. Van Buren |
| 7. Carter | 50. Wayne |
| 8. Chester | 51. White |
| 9. Claiborne | |
| 10. Clay, Circuit | |
| 11. Cocke, Circuit | |
| 12. Cocke, General Sessions | |
| 13. Crockett | |
| 14. Decatur | |
| 15. DeKalb | |
| 16. Dyer | |
| 17. Fentress | |
| 18. Grainger | |
| 19. Greene | |
| 20. Hardeman | |
| 21. Henderson | |
| 22. Henry | |
| 23. Houston | |
| 24. Jackson | |
| 25. Jefferson | |
| 26. Johnson | |
| 27. Lake | |
| 28. Lawrence | |
| 29. Lewis | |
| 30. Lincoln | |
| 31. Loudon | |
| 32. Macon | |
| 33. Marion | |
| 34. Meigs | |
| 35. Morgan | |
| 36. Overton | |
| 37. Perry | |
| 38. Pickett | |
| 39. Polk | |
| 40. Rhea | |
| 41. Roane | |
| 42. Scott | |
| 43. Sequatchie | |